



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENTS AND APPEALS AND
INTERFERENCES

In re Application of:

BEVERLY RICHARD Group Art Unit 1772

Serial No. 10/057,346 Examiner: WILLIAM P. WATKINS III

Filed: January 28, 2002 Appeal No. _____

COMMISSIONER OF PATENTS
P. O. BOX 1450
ALEXANDRIA, VA. 22313-1450

BRIEF OF APPLICANT

Applicant BEVERLY RICHARD has filed a timely Notice of Appeal from the action of the Primary Examiner in finally rejecting all the claims in the Application. This is an appeal from the final rejection of the Examiner dated November 18, 2004 rejecting claims 1 through 12. The filing fee of \$250.00 is attached.

The application was filed on January 28, 2002 as a new application with 12 claims of which two (2) were independent claims. Claims 1 through 6 were rejected on April 9, 2003 with claims 7 through 12 being inadvertently omitted by the Examiner. All of the claims were rejected on January 2, 2004.

RELATED APPEALS AND INTERFERENCES

This is Applicant's first appeal.

STATUS OF CLAIMS

In Applicant's response dated April 9, 2003 Claims 2, 3, 4, and 6 were amended. In Applicant's response dated January 2, 2004 claims 8, 9, 10, and 12 were amended. The status of the claims as set out in the final office action dated November 18, 2004 was and is as follows:

allowed claims-none

claims objected to-none

claims rejected- claims 1 through 12.

The amendments that were filed on April 9, 2003 and November 18, 2004 were entered.

SUMMARY OF THE INVENTION

This invention relates to toilet tissue and more particularly to an antibacterial toilet tissue for protecting a user from bacterial agents that may exist after the waste elimination process while using bathroom facilities. Cleanliness is an ongoing concern because of the health consequences associated therewith. Cleanliness is of particular concern when individuals are using bathroom facilities. Normally, this concern is addressed with tissue products such as toilet paper. This solution however does not necessarily deal with all the bacterial conditions that may result from this process. Thus it is desirable to have a tissue product that maximizes the opportunity to eliminate any bodily bacteria that may result from individuals use of bathroom facilities.

Figures 1 through 5 illustrate the Antibacterial toilet paper of this invention.

An antibacterial tissue 10 is provided. The tissue 10 includes an upper planar shaped absorbent member 12, and an intermediate planar shaped absorbent member 18. A dry antibacterial member 22, which is activated by moisture, is formed on the intermediate planar shaped absorbent member 18 and coupled between the upper planar shaped absorbent member 12 and the intermediate planar shaped absorbent member. A lower planar shaped absorbent member 24 is coupled to a lower surface of the intermediate planar shaped absorbent member 18. As a result an antibacterial tissue 10 is formed to facilitate bacterial removal while the tissue is being used.

THE REJECTION

Claims 1 through 12 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,280,757 issued to David M. McAtee et al.

THE ISSUE

Issue 1.

Whether Applicant's invention as disclosed in Applicant's Claims 1 through 6 would have been obvious at the time of Applicant's invention to one skilled in the art in view of the McAtee patent.

Issue 2.

Whether Applicant's invention as disclosed in Applicant's Claims 7 through 12 would have been obvious at the time of Applicant's invention to one skilled in the art in view of the McAtee patent.

ARGUMENTS
Argument on Issue 1.
Issue 1 Restated.

Whether Applicant's invention as disclosed in Applicant's Claims 1 through 6 would have been obvious at the time of Applicant's invention to one skilled in the art in view of the McAtee patent.

The McAtee patent discloses a disposable personal cleansing article useful for cleansing, and optionally conditioning the skin or hair. The cleansing article of this invention includes a two-ply substrate wherein one or both plies are apertured. At least one of the plies of the article is wet extensible and the other ply is less wet extensible. The articles are substantially dry prior to use and contain one or more water soluble and water insoluble conditioning agents in addition to a lathering agent. The articles are used by the consumer by wetting the article, which may be dry, with water and thereafter forming a lather by rubbing the article against itself and/or against the skin or hair.

There is no teaching in the McAtee patent of an upper planar shaped absorbent member as taught in Applicant's Claim 1. There is also no teaching or suggestion in the McAtee patent of an intermediate planar shaped absorbent member having a plurality of apertures formed therein coupled to the upper planar shaped absorbent member. Additionally there is no teaching or suggestion in the McAtee patent of an antibacterial member being formed on an upper surface of the intermediate planar shaped absorbent member between the upper planar shaped absorbent member and the intermediate planar shaped absorbent member. Still further there is no teaching or suggestion in the McAtee patent of a lower planar shaped absorbent member which is coupled to a lower surface of the intermediate planar shaped absorbent member as taught in Applicant's claim.

Rather the McAtee patent discloses a two-ply article with one ply being wet extensible and the other ply being less wet extensible.

The Examiner contends that the McAtee patent discloses two outer layers, which maybe made of paper fibers and an internal patterned adhesive layer with a cleaning substance in the patterned adhesive. The Examiner also contends that more than two plies may also be used with any or all of the plies being apertured. This is not the case. The McAtee patent discloses that when two or more layers are formed they are used to form the water insoluble substrate. The apertures do not protrude completely through the surface as taught in Applicant's claim. The Examiner also contends that there is an upper member that is substantially planar and cites figure 5A. There is no substantially planar upper member in figure 5A. It is respectfully submitted that the Examiner's position can only be maintained through hindsight after having the benefit of the teachings of Applicant's invention.

Clearly Applicant's Claim 1 is distinguishable over the McAtee Patent.

Claims 2 through 6 which depend from claim 1 are distinguishable over the McAtee patent for the same reasons as set forth in Claim 1. Additionally claim 2 is further distinguishable over the McAtee patent because there is no teaching or suggestion in the McAtee patent of the upper planar shaped absorbent member including a thin one ply paper absorbent material.

Claim 3 is also further distinguishable over the McAtee patent because there is no teaching or suggestion in the McAtee patent of an antibacterial tissue wherein the intermediate planar shaped absorbent member includes a thin one ply paper material having a plurality of openings formed therein as taught by Applicant.

Still further claim 4 is distinguishable over the McAtee patent because there is no teaching or suggestion in the McAtee patent of the antibacterial member having a dry antibacterial member

which is activated by moisture from the body as in Applicant's Claim 4. Instead the McAtee patent discloses a soap and lathering agent that is activated by wetting the article and rubbing the article against itself.

Claim 5 is further distinguishable over the McAtee patent because there is no teaching or suggestion in the McAtee patent of an antibacterial tissue wherein the antibacterial member includes a layer of antibacterial soap.

There is also no teaching or suggestion in the McAtee patent of an antibacterial tissue wherein the antibacterial member includes a layer of antibacterial agent as taught in Applicant's claim 6.

Arguments on Issue 2.

Issue 2 Restated.

Whether Applicant's invention as disclosed in Applicant's Claims 7 through 12 would have been obvious at the time of Applicant's invention to one skilled in the art in view of the McAtee patent.

There is no teaching in the McAtee patent of an upper planar shaped absorbent member as taught in Applicant's Claim 7. There is also no teaching or suggestion in the McAtee patent of a lower planar shaped absorbent member having a plurality of apertures formed therein coupled to the upper planar shaped absorbent member as taught in Applicant's Claim 7. There is also no teaching or suggestion in the McAtee patent of an antibacterial member formed on an upper surface of the lower planar shaped absorbent member and the lower planar shaped absorbent member as taught by Applicant. Rather the McAtee patent discloses a two-ply article with one ply being wet extensible and the other ply being less wet extensible.

Clearly Applicant's Claim 7 is distinguishable over the McAtee Patent.

Claims 8 through 12 which depend from claim 7 is distinguishable over the McAtee patent for the same reasons as set forth in Claim 7. Additionally claim 8 is distinguishable over the McAtee patent because there is no teaching or suggestion in the McAtee patent of the upper planar shaped absorbent member including a thin one ply paper absorbent material.

Claim 9 is also further distinguishable over the McAtee patent because there is no teaching of suggestion in the McAtee patent of an antibacterial tissue wherein the intermediate planar shaped absorbent member includes a thin one ply paper material having a plurality of openings formed therein as taught by Applicant.

Still further claim 10 is distinguishable over the McAtee patent because there is no teaching or suggestion in the McAtee patent of the antibacterial member having a dry antibacterial member which is activated by moisture from the body as in Applicant's Claim 4. Instead the McAtee patent discloses a soap and lathering agent that is activated by wetting the article and rubbing the article against itself.

Claim 11 is further distinguishable over the McAtee patent because there is no teaching or suggestion in the McAtee patent of an antibacterial tissue wherein the antibacterial member includes a layer of antibacterial soap.

There is also no teaching or suggestion in the McAtee patent of an antibacterial tissue wherein the antibacterial member includes a layer of antibacterial agent as taught in Applicant's claim 12.

The Examiner contends that the cleansing substance can be added onto or impregnated into any or all of the surfaces of the different layers, either before or after they are joined. This still would not teach or suggest Applicant's invention.

The Examiner also contends that the lather layer of the McAtee patent can be considered as an antibacterial agent, as are all soaps since the function is to remove bacteria. This is not the case. All soaps are not considered as antibacterial agents. However, this still would not teach Applicant's invention. The McAtee patent discloses a two-ply disposable cleansing article with a lathering agent and an optional conditional agent for cleansing the skin or hair. This is a totally different structure and concept than that of Applicant's invention.

CLAIMS APPENDIX

1. (Original) An antibacterial tissue including:

an upper planar shaped absorbent member;

an intermediate planar shaped absorbent member having a plurality of apertures formed therein coupled to the upper planar shaped absorbent member;

an antibacterial member formed on an upper surface of the intermediate planar shaped absorbent member between the upper planar shaped absorbent member and the intermediate planar shaped absorbent member; and

a lower planar shaped absorbent member coupled to a lower surface of the intermediate planar shaped absorbent member.

2. (Previously Amended) An antibacterial tissue as defined in claim 1 wherein the upper planar shaped absorbent member includes a thin one ply paper absorbent material.

3. (Previously Amended) An antibacterial tissue as defined in claim 2 wherein the intermediate planar shaped absorbent member includes a thin one ply paper material having a plurality of openings formed therein.

4. (Previously Amended) An antibacterial tissue as defined in Claim 3 wherein the antibacterial member is a dry antibacterial member which is activated by moisture from the body.

5. (Original) An antibacterial tissue as defined in Claim 4 wherein the antibacterial member includes a layer of antibacterial soap.

6. (Previously Amended) An antibacterial tissue as defined in Claim 4 wherein the antibacterial member includes a layer of antibacterial agent.

7. (Original) An antibacterial tissue including:

an upper planar shaped absorbent member;

a lower planar shaped absorbent member having a plurality of apertures formed therein coupled to the upper planar shaped absorbent member; and

an antibacterial member formed on an upper surface of the lower planar shaped absorbent member between the upper planar shaped absorbent member and the lower planar shaped absorbent member.

8. (Previously Amended) An antibacterial tissue as defined in claim 7 wherein the upper planar shaped absorbent member includes a thin one ply paper absorbent material.

9. (Previously Amended) An antibacterial tissue as defined in claim 8 wherein the lower planar shaped absorbent member includes a thin one ply paper material having a plurality of openings formed therein.

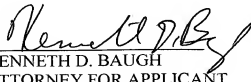
10. (Previously Amended) An antibacterial tissue as defined in Claim 9 wherein the antibacterial member is a dry antibacterial member which is activated by moisture from the body.

11. (Original) An antibacterial tissue as defined in Claim 10 wherein the antibacterial member includes a layer of antibacterial soap.

12. (Previously Amended) An antibacterial tissue as defined in Claim 10 wherein the antibacterial member includes a layer of antibacterial agent.

CONCLUSION

Clearly as stated in the previous arguments, the McAtee Patent does not teach or suggest Applicant's invention. Applicant's claims are distinguishable over the this invention. For these reasons is submitted that the Applicant's claims should be allowed and this application should be allowed.


KENNETH D. BAUGH
ATTORNEY FOR APPLICANT
BEVERLY RICHARD
2413 BLODGETT
HOUSTON, TEXAS 77004
(713) 529-2901 (OFFICE)
(713) 529-0147 (FAX)
REG. NO. 27,707